

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-11992-RGS

MICHAEL McDERMOTT,
Petitioner

v.

STEVE O'BRIEN,
Respondent

ORDER ON REPORT AND RECOMMENDATION
OF THE MAGISTRATE JUDGE

November 10, 2011

STEARNS, D.J.

I agree with Magistrate Judge Bowler's three essential determinations in her Report: (1) that there was no unreasonable failure by counsel to investigate and present a so-called "Prozac defense"; (2) that there was no error in the Supreme Judicial Court's determination that the evidence did not warrant an instruction on involuntary intoxication, much less a ruling contrary to established Supreme Court precedent; and (3) that there is no merit to the contention that *Ake v. Oklahoma*, 470 U.S. 68 (1985), conferred on petitioner a due process right to public funds to pay an expert witness for purposes of seeking post-conviction relief (a proposition that the Supreme Court has never endorsed or even intimated). Consequently, the Recommendation is ADOPTED

and the petition is DISMISSED with prejudice.¹ Any request for the issuance of a Certificate of Appealability, pursuant to 28 U.S.C. § 2253, is DENIED, the court seeing no meritorious or substantial basis supporting an appeal. The Clerk is instructed to close the case.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

¹ Petitioner has filed an Objection that simply repeats the substance of the arguments made in his Petition without identifying any flaws in the reasoning of the Magistrate Judge's Report or in her conclusions.